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EXAMINER

ROBINSON, KITO R

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/787,495	Applicant(s) HOROWITZ ET AL.	
	Examiner KITO R. ROBINSON	Art Unit 3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) 7 & 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on 01 July 2009.
2. Claims 1, 11 & 13 have been amended.
3. Claims 7 & 14 have been canceled.
4. Claims 1-16, 8-13 & 15-27 are currently pending and have been examined.

Response to Amendment

5. Applicant's arguments received on 01 July 2009 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the teachings of the references while providing evidence that establishes further support for the rejections of the claims.
6. With respect to claims 1-6, 8-13 & 15-27, Applicant argues "the assets (e.g. cash) are transformed into an investment pool (e.g. certificates of deposits, stocks, bonds, etc.) having a given a rate of return. In other words, the cash is exchanged for the securities in the investment pool. Simply put one asset is turned into another asset. This is by definition believed to be a transformation that qualifies under § 101."

However, the Examiner respectfully disagrees. The Bilski Court stated the dependent claims were drawn to patent-eligible subject matter where it specified that "said data is X-ray attenuation data produced in a two dimensional field by a computed tomography scanner that this data clearly represented "physical and tangible objects, namely the structure of bones, organs, and other body

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tissues.” Furthermore, the data was literally transformed into a physical, tangible object (i.e. the x-ray). However, applicant’s assertion that “the assets (e.g. cash) are transformed into an investment pool (e.g. certificates of deposits, stocks, bonds, etc.) having a given a rate of return. In other words, the cash is exchanged for the securities in the investment pool. Simply put one asset is turned into another asset,” this assertion is incorrect. In the instant application the first prong *(1) to be tied to a particular machine or apparatus* would be a better way to overcome the rejection because the second prong *(2) transform underlying subject matter (such as an article or materials) to a different state or thing* is not applicable to applicant’s invention because no physical tangible objects are produced from the result of claim 1.

7. With respect to claim 1-6, 8-13 & 15-27, Applicant argues “The Examiner believes that it would be logical to combine the teachings of Frattalone with Singletary to read on the invention of the instant application.”

This argument is moot in view of the rejection. However, the Examiner combines Singletary with the teachings of Frattalone. Frattalone discloses collateralizing a first investment representing ownership interests of a plurality of independent investors. The financing is used to acquire a second investment (abstract). The "investment vehicle" includes, for example, a mutual fund, unit investment trust, a limited or general partnership, a limited liability company, a publicly held stock company, a C-Corp, S-Corp, Foreign Corp. Investment Trust, or any suitable form of structure (paragraph 0032). Dividends, income etc. resulting from ownership of the securities may be distributed to the investors, held for reinvestment, reinvested, etc. (paragraph 0039). Singletary discloses laddering CD to produce income every year while earning the 5-year CD rate. It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

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8. With respect to claims 1, 11 & 13, Applicant argues "Neither Singletary nor Frattalone actively calculated when the first investment pool will be exhausted and determine actively a method for replenishing the depleted distribution pool. Claims 11 and 13 recite similar language."

The Examiner respectfully disagrees. Frattalone in at least the Abstract discloses a first investment representing ownership interests of a plurality of independent investors is used to acquire a second investment. Furthermore, Frattalone in paragraph 0039 discloses dividends, income etc. resulting from ownership of the securities may be distributed to the investors, held for reinvestment, reinvested, etc.

9. With respect to claim 5, Applicant argues "Claim 5 recites the "rebalancing" only after the distribution investment pool (e.g. fourth investment pool) is exhausted. Arena does not teach rebalancing due to exhaustion of a given fund (investment pool); rather rebalancing is performed only after a risk level change has occurred."

The Examiner respectfully disagrees. Frattalone in at least the Abstract discloses a first investment representing ownership interests of a plurality of independent investors is used to acquire a second investment and Arena discloses rebalancing is performed only after a risk level change has occurred. It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Applicant further Argues "In summary, there are no teachings in Arena, Frattalone or Singletary to rebalance the investment pools by converting assets of the second investment pool into a fourth investment pool (seventh investment pool) having the assumed average first rate of return only after the first investment pool is exhausted" (emphasis added)."

The Examiner respectfully disagrees and points Applicant to the explanations found above. Frattalone discloses collateralizing a first investment representing ownership interests of a plurality of independent investors. The financing is used to acquire a second investment (abstract). Dividends, income etc. resulting from ownership of the securities may be distributed to the investors, held for

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reinvestment, reinvested, etc. (paragraph 0039). Singletary discloses laddering CD to produce income every year while earning the 5-year CD rate. Arena discloses rebalancing is performed only after a risk level change has occurred. It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claims 1-6, 8-13 & 15-27 are rejected under 35 U.S.C. § 101 based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to a particular machine or apparatus or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876). The process steps in claims (1-6, 8-13 & 15-27) are not tied to a particular machine or apparatus nor do they execute a transformation. Thus, they are non-statutory.

('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (In re Bilski, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))

Applicant's assertion that "the assets (e.g. cash) are transformed into an investment pool (e.g. certificates of deposits, stocks, bonds, etc.) having a given a rate of return. In other words, the cash is exchanged for the securities in the investment pool. Simply put one asset is turned into another

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asset,” this assertion is incorrect. In the instant application the first prong *(1) to be tied to a particular machine or apparatus* would be a better way to overcome the rejection because the second prong *(2) transform underlying subject matter (such as an article or materials) to a different state or thing* is not applicable to applicant’s invention because no physical tangible objects are produced from the result of claim 1.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 1-4, 13, 22-24, 26 & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frattalone US 2002/0019793 A1 in view of Singletary [Choices for Conservative Savers]. The Washington Post. Washington, D.C.: Sep 15, 2002. p. H.01].

Claim 1

Frattalone discloses:

- investing a first portion of the assets in a first investment pool at an assumed average first rate of return and setting a size of the first portion held in the first investment pool to be large enough to handle anticipated distributions of cash flow needs for at least three years **(Paragraph 0012)**
- determining when the first investment pool will be exhausted and converting assets of the second investment pool into a fourth investment pool having the assumed average first rate of return when the first investment pool is exhausted **(paragraph 0013, 0055) The investment pool will be exhausted on the maturity date of the investment.**

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Frattalone does not disclose the following, however, Singletary does:

- investing a second portion of the assets in a second investment pool at an assumed average second rate of return being greater than the assumed average first rate of return; **(paragraph 3, 13, 14)**
- investing a third portion of the assets in a third investment pool at an assumed average third rate of return being greater than the assumed average second rate of return; **(paragraph 3, 13, 14)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone with the technique of Singletary because it is a quick and convenient that risk can be lessened, and average returns increased, through diversification, i.e. by dividing investment capital among a variety of investments in different asset classes and/or with different risk, reward, and other characteristics (as taught by Frattalone in paragraph 0009).

Regarding Claim 2,

Frattalone & Singletary disclose, the method according to claim 1. Frattalone does not disclose the following, however Singletary does:

- which further comprises distributing assets, being a combination of income and return of principle, from the first investment pool before distributing assets from any other investment pool.
(paragraph 3, 13, 14)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

Regarding Claim 3,

Frattalone & Singletary disclose, the method according to claim 2. Frattalone does not disclose the following, however Singletary does:

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- which further comprises distributing the assets from the first investment pool on a weekly, monthly or annual basis until the first investment pool is completely exhausted from the distributions of income and return of principle. **(paragraph 3, 13, 14)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

Regarding Claim 4,

Frattalone & Singletary disclose, the method according to claim 2. Frattalone does not disclose the following, however Singletary does:

- after the assets of the second investment pool have been converted to the fourth investment pool having lower risks, distributing assets from the fourth investment pool when the assets of the first investment pool are completely exhausted due to the distributions of income and return of principle **(paragraph 0013)**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

Regarding Claim 7, Cancelled

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Regarding Claim 13,

Frattalone discloses:

- thus allowing the assets in the second pool through the sixth pool to experience a compounding effect and tax-efficiency by not being distributed until after the first investment pool is exhausted **(paragraph 0006)**;
- investment pool, selected from the group consisting of money market funds, certificates of deposits, treasuries and short term bank loans, at an assumed average first rate of return **(paragraph 0005)**;
- second investment pool, selected from the group consisting of corporate bonds and municipality bonds, at an assumed average second rate of return being greater than the assumed average first rate of return **(paragraph 0005)**;
- a third investment pool, selected from the group consisting of corporate bonds, convertible bonds, and preferred stock, at an assumed average third rate of return being greater than the assumed average second rate of return **(paragraph 0006)**;
- a fourth investment pool, selected from the group consisting of large cap equities and real estate, at an assumed average fourth rate of return being greater than the assumed average third rate of return **(paragraph 0008)**;
- a fifth investment pool, selected from the group consisting of mid-cap equities, high yield bonds, emerging market debt, and international bonds, at an assumed average fifth rate of return being greater than the assumed average fourth rate of return, the fifth investment pool formed of investments containing equities **(paragraph 0005 & 0006)**;
- a sixth investment pool, selected from the group consisting of small-cap equities, international equities, emerging market equities, limited partnerships, managed futures, and hedge funds, at an assumed average sixth rate of return being greater than the assumed average fifth rate of return **(paragraph 0005 & 0006)**;
- designating the first investment pool to be a pool from which assets may be distributed from until the first investment pool is exhausted **(paragraph 0013, 0055)**

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- determining when the first investment pool will be exhausted and converting assets of the second investment pool into a seventh investment pool having the assumed average first rate of return when the first investment pool is exhausted due to distributions (**paragraph 0013, 0055**) **The investment pool will be exhausted on the maturity date of the investment.**
- distributing the assets from the seventh investment pool when the assets in the first investment pool are exhausted (**paragraph 0013, 0055**).

Frattalone does not disclose the following, however Singletary does:

- investing a first portion of the assets in a first investment pool at an assumed average first rate of return; (**paragraph 3, 13, 14, 16**)
- investing a second portion of the assets in a second investment pool at an assumed average second rate of return being greater than the assumed average first rate of return; (**paragraph 3, 13, 14, 16**)
- investing a third portion of the assets in a third investment pool at an assumed average third rate of return being greater than the assumed average second rate of return; (**paragraph 3, 13, 14, 16**)
- investing a fourth portion of the assets in a fourth investment pool at an assumed average fourth rate of return being greater than the assumed average third rate of return; (**paragraph 3, 13, 14, 16**)
- investing a fifth portion of the assets in a fifth investment pool at an assumed average fifth rate of return being greater than the assumed average fourth rate of return; (**paragraph 3, 13, 14, 16**)
- investing a sixth portion of the assets in a sixth investment pool at an assumed average sixth rate of return being greater than the assumed average fifth rate of return; (**paragraph 3, 13, 14, 16**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone with the technique of Singletary because it is a quick and convenient that risk can be lessened, and average returns increased, through diversification, i.e. by dividing investment capital among a variety of investments in different asset classes and/or with different risk, reward, and other characteristics (as taught by Frattalone paragraph 0009).

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Regarding Claim 14, Cancelled

Regarding Claim 22,

Frattalone discloses:

- which further comprises distributing the assets only from the first investment pool until the first investment pool is exhausted. **(Abstract and paragraph 0055)**

Regarding Claim 23,

Frattalone discloses:

- which further comprises designating the distributions to be a combination of income and return of principle **(Paragraph 0039)**

Regarding Claim 24,

Frattalone & Singletary disclose, the method according to claim 13. Frattalone does not disclose the following, however Singletary does:

- which further comprises distributing the assets weekly, monthly, yearly, or as desired. **(¶ 3, 13, 14, 16)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

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Regarding Claim 26,

Frattalone & Singletary disclose, the method according to claim 13. Frattalone does not disclose the following, however Singletary does:

- which further comprises investing the assets in each subsequent investment pool for a longer time period than a previous investment pool where the assets of the sixth investment pools are invested for a longest time period and the assets of the first investment pool are invested for the shortest period of time. **(paragraph 3, 13, 14, 16)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

Regarding Claim 27,

Frattalone & Singletary disclose, the method according to claim 13. Frattalone does not disclose the following, however Singletary does:

- which further comprises investing the assets in each subsequent investment pool for a longer time period than a previous investment pool where the assets of the third investment pools are invested for a longest time period and the assets of the first investment pool are invested for the shortest period of time. **(paragraph 3, 13, 14, 16)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of collateralizing a first investment representing ownership interests of a plurality of independent investors to acquire a second investment of Frattalone with the technique of producing income every year of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

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14. Claims 5, 6, 11, 12, 15-21 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frattalone in view of Singletary and in further view of Arena et al. [U.S. Pub. No. 2002/0174045].

Regarding Claim 5,

Singletary and Frattalone disclose, the method according to claim 4. Singletary and Frattalone do not disclose the following however, Arena does:

- bifurcating assets of the third investment pool into a fifth investment pool having the assumed average first rate of return and a sixth investment pool having the assumed average second rate of return when the fourth investment pool is completely exhausted due to the distributions of income and return of principle; **(paragraph 8, 66, 67, 71, 115, 116)**
- distributing assets from the fifth investment pool until the fifth investment pool is exhausted due to the distributions of income and return of principle. **(paragraph 8, 66, 67, 71, 115, 116)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Regarding Claim 6,

Frattalone and Singletary disclose, the method according to claim 5. Singletary and Frattalone do not disclose the following however, Arena does:

- converting assets of the sixth investment pool into a seventh investment pool, having the assumed average first rate of return, when the fifth investment pool is exhausted due to the distributions of income and return of principle; **(paragraph 8, 66, 67, 71, 115, 116)**
- distributing assets from the seventh investment pool until the seventh investment pool is exhausted due to distributions of income and return of principle. **(paragraph 8, 66, 67, 71, 115, 116)**

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It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because it is a quick and convenient that risk can be lessened, and average returns increased, through diversification, i.e. by dividing investment capital among a variety of investments in different asset classes and/or with different risk, reward, and other characteristics (as taught by Frattalone in paragraph 0009).

Regarding Claim 11,

Frattalone discloses:

- determining when the first investment pool will be exhausted and converting at least part of the assets of a second investment pool having an assumed average second rate of return being a next lowest rate of return into a new investment pool when the first investment pool is exhausted due to distributions, the assets of the new investment pool being invested at a same assumed average rate of return as the first investment pool and being available for distribution **(paragraph 0013, 0055) The investment pool will be exhausted on the maturity date of the investment.**

Frattalone does not disclose the following, however Singletary does:

- investing the assets in a multiplicity of investment pools each having different assumed average rates of return and each having greater and greater time horizons; **(paragraph 3, 13, 14, 16)**
- designating a first investment pool of the investment pools to have an assumed average first rate of return being a lowest rate of return of all the investment pools and from which distributions are first withdrawn from, as needed, before withdrawing funds from any of the other investment pools; **(paragraph 3, 13, 14, 16)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone with the technique of Singletary because is a more efficient and a more effective way of maintaining income for retirement while generating continuous cash flow.

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Regarding Claim 12,

Frattalone discloses,

- which further comprises designating the distributions to be a combination of income and return of principle (**paragraph 0039**)

Regarding Claim 15,

Singletary and Frattalone disclose, the method according to claim 14. Singletary and Frattalone do not disclose the following however, Arena does:

- bifurcating assets of the third investment pool into an eighth investment pool having the assumed average first rate of return and a ninth investment pool having the assumed average second rate of return when the seventh investment pool is exhausted; (**paragraph 8, 66, 67, 71, 115, 116**)
- distributing the assets from the eighth investment pool as needed. (**paragraph 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

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Regarding Claim 16,

Frattalone & Singletary disclose, the method according to claim 15. Frattalone & Singletary do not disclose the following however, Arena does:

- converting assets of the ninth investment pool into a tenth investment pool having the assumed average first rate of return when the eighth investment pool is exhausted; **(paragraph 8, 66, 67, 71, 115, 116)**
- distributing the assets from the tenth investment pool as needed. **(paragraph 8, 66, 67, 71, 115, 116)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Regarding Claim 17,

Frattalone & Singletary disclose, the method according to claim 16. Frattalone & Singletary do not disclose the following however, Arena does:

- bifurcating assets of the fourth investment pool into an eleventh investment pool having the assumed average first rate of return and a twelfth investment pool having the assumed average second rate of return when the tenth investment pool is exhausted; **(¶ 8, 66, 67, 71, 115, 116)**
- distributing the assets from the eleventh investment pool as needed. **(¶ 8, 66, 67, 71, 115, 116)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

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Regarding Claim 18,

Frattalone & Singletary disclose, the method according to claim 17. Frattalone & Singletary do not disclose the following however, Arena does:

- converting the assets of the twelfth investment pool into a thirteenth investment pool having the assumed average first rate of return when the eleventh investment pool is exhausted; (**¶ 8, 66, 67, 71, 115, 116**)

- distributing the assets from the thirteenth investment pool as needed. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Regarding Claim 19,

Frattalone & Singletary disclose, the method according to claim 18. Frattalone & Singletary do not disclose the following however, Arena does:

- converting the assets of the fifth investment pool into three new investment pools, including a fourteenth investment pool having the assumed average first rate of return, a fifteenth investment pool having the assumed average second rate of return, and a sixteenth investment pool having the assumed average third rate of return, when the thirteenth investment pool is exhausted; (**¶ 8, 66, 67, 71, 115, 116**)

- distributing the assets from the fourteenth investment pool as needed. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

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Regarding Claim 20,

Frattalone & Singletary disclose, the method according to claim 19. Frattalone & Singletary do not disclose the following however, Arena does:

- converting assets of the fifteenth investment pool into a seventeenth investment pool having the assumed average first rate of return when the fourteenth investment pool is exhausted; (**¶ 8, 66, 67, 71, 115, 116**)
- distributing the assets from the seventeenth investment pool as needed. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Regarding Claim 21,

Frattalone & Singletary disclose, the method according to claim 20. Frattalone & Singletary do not disclose the following however, Arena does:

- converting the assets of the sixteenth investment pool into an eighteenth investment pool having the assumed average first rate of return when the seventeenth investment pool is exhausted; (**¶ 8, 66, 67, 71, 115, 116**)
- distributing assets from the eighteenth investment pool as needed. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because It is the substitution of rebalancing only after a risk level change of the secondary reference Arena for the acquiring of a second investment of the primary reference Frattalone. Thus the simple substitution of one known element for another producing a predictable result renders the claim obvious.

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Regarding Claim 25, Frattalone & Singletary discloses, the method according to claim 13.

Regarding Claim 25, Frattalone & Singletary fail to disclose,

- which further comprises periodically reviewing a value of each of the investment pools and rebalancing values of all the investment pools as needed.

Regarding Claim 25, Arena et al. discloses,

- which further comprises periodically reviewing a value of each of the investment pools and rebalancing values of all the investment pools as needed. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Arena because it is a quick and convenient that risk can be lessened and to maximized the return on the investment.

15. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frattalone in view of Singletary as applied to claim 1 above, and further in view of Manning [U.S. Pub. No. 2004/0088236].

Regarding Claim 8,

Frattalone and Singletary disclose, the method according to claim 1. Frattalone and Singletary do not disclose the following, however Manning does:

- designating an annual amount of funds needed to be withdrawn per year; (**¶ 21, 32, 35, 46, 47**)
- setting a size of the first portion initially held in the first investment pool to be at least three times the annual amount. (**¶ 21, 32, 35, 46, 47**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone & Singletary with the technique of Manning because it is a more efficient and a more effective way to provide continuous cash flow.

Regarding Claim 9,

Frattalone and Singletary disclose, the method according to claim 8. Frattalone discloses putting all remaining assets in the third investment pool (Abstract).

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Frattalone discloses using the assets to acquire the second investment pool, however it would be an obvious modification to acquire a third investment from the teachings of Frattalone.

Frattalone and Singletary do not disclose the following, however Manning does:

- setting a size of the second portion to be initially held in the second investment pool to be at least three times the annual amount; (**¶ 21, 32, 35, 46, 47**)

Regarding Claim 9, Arena et al. further discloses,

- putting all remaining assets in the third investment pool. (**¶ 8, 66, 67, 71, 115, 116**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone and Singletary with the technique of Manning because it is a quick and convenient that risk can be lessened and to maximized the return on the investment through diversification of the portfolio while eliminating the need to raise additional capital for the investment.

16. Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frattalone in view of Singletary in further view of Arena as applied to claim 5 above, and further in view of Manning [U.S. Pub. No. 2004/0088236].

Regarding Claim 10,

Frattalone and Singletary disclose, the method according to claim 5. Frattalone and Singletary do not disclose the following however Arena et al. does:

- putting all remaining assets of the third investment pool into the sixth investment pool. (**¶ 8, 66, 67, 71, 115, 116**)

Frattalone, Singletary and Arena do not disclose the following, however Manning does:

- setting a size of the fifth investment pool to be at least three times an annual amount to be withdrawn over a course of a year; (**¶ 21, 32, 35, 46, 47**)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Frattalone, Singletary & Arena with the technique of Manning because it is a quick and convenient that risk can be lessened and to maximized the return on the investment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KITO R. ROBINSON** whose telephone number is **(571) 270-3921**. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Charles Kyle** can be reached on **(571) 272-6746**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or **571-272-1000**.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

/Kito R Robinson/
Examiner, Art Unit 3695

06 November 2009